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December 13, 2004

VIA FACSIMILE AND COURIER

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
Attn: Alva E. Smith

RE: MUR 5550 – Michael Moore

Dear Mr. Norton:

We are submitting this letter on behalf of Michael Moore in response to the recent amendment to the complaint filed by David T. Hardy. We have previously submitted a blanket Designation of Counsel form.

While the amendment provides more detail with regard to the basis for certain of the complainant's allegations, it does not raise any new substantive issues. For that reason, our response to the initial complaint, which we attach and incorporate by reference here, addresses the amended complaint.

In brief, (i) the complaint remains procedurally defective in that it is not sufficiently clear or specific and it lacks a recitation of facts alleging or describing a violation of the Federal Election Campaign Act of 1971, as amended ("FECA") by Mr. Moore, (ii) the allegations are without merit, (iii) Mr. Moore is outside the scope of the complaint, as it alleges misuse of corporate assets and Mr. Moore is an individual, and (iv) neither the speeches themselves, nor the speaking tour as a whole, violate FECA, in that Mr. Moore was acting as a paid speaker engaging in protected political speech on campus, he was not acting as a candidate or a representative of any campaign, and his speeches and speaking tour did not comprise an improper political contribution by Mr. Moore.

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Lawrence H. Norton, Esq.
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For the reasons summarized here and discussed in detail in our attached original response, the Federal Election Commission should dismiss the complaint against Mr. Moore.

Respectfully submitted,



Kenneth A. Gross
Christine E. Kirk
Skadden, Arps, Slate, Meagher
& Flom LLP

Attorneys for Michael Moore

Enclosure

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November 15, 2004

VIA FACSIMILE AND OVERNIGHT DELIVERY

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463
Attn: Alva E. Smith

RE: MUR 5550 – Michael Moore

Dear Mr. Norton:

We are submitting this letter on behalf of Michael Moore in response to the complaint filed by David T. Hardy. We have previously submitted a blanket Designation of Counsel form.

This complaint alleges that Mr. Moore's speaking tour violates the Federal Election Campaign Act of 1971, as amended, ("FECA") by permitting corporate funds (from universities and student groups) to pay for a speaking tour alleged to include "nothing more than straightforward stump speeches" rather than permissible political discussion, resulting in illegal corporate expenditures to influence a federal election. MUR 5550 at p. 1. In addition to being procedurally defective, these allegations are without merit. Even if the Commission found merit in them, they would be applicable only to a corporation. As a result, Mr. Moore should be dismissed as a respondent and the complaint should be dismissed.

1. The Complaint Is Procedurally Defective

As a procedural matter, it is difficult to respond to the above-referenced complaint, in that it does not meet the standard of specificity or clarity required under Federal Election Commission ("FEC" or "Commission") rules.

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Indeed, Commission rules require that a complaint clearly identify the person or entity who is alleged to have committed a violation and contain a clear and concise recitation of the facts describing such violation. 11 C.F.R. § 111.4(d).

Although the complaint criticizes the speaking tour by Mr. Moore and alleges violations in its funding, it does not identify any particular party or parties as respondent(s), and does not allege specific violations against specific parties. In particular, this complaint lacks a clear and concise recitation of facts alleging or describing a violation of FECA by Mr. Moore. 11 C.F.R. §§ 111.4(d)(1) and 111.4(d)(3). In addition, the complainant provides no supporting documentation to accompany his complaint (11 C.F.R. § 111.4(d)(4)), although he does direct readers of the complaint to access two websites for a description of a speech by Mr. Moore. MUR 5550 at p. 1.

Please note that the Commission and Congress have recently held hearings about the enforcement process and tightening the complaint procedure so that the Commission does not expend its limited resources untangling a web of unsubstantiated statements with nothing more than general allegations mentioning FECA provisions. Thus, given the deficiency of this complaint, we request that it be dismissed on procedural grounds alone.

2. The Scope of the Complaint Excludes Mr. Moore

The complainant alleges Mr. Moore's speeches on this tour comprise "stump speeches in battleground states" and that therefore the entities that pay Mr. Moore for his appearances have engaged in or will engage in "forbidden corporate financial involvement" in the election. MUR 5550 at p. 2. Mr. Moore's speeches are not "stump speeches." In addition, as discussed below, the speeches do not violate FECA. However, even if the Commission were to find that the speeches constituted regulated activity under FECA, as Mr. Moore is an individual citizen, and this complaint alleges solely corporate violations, Mr. Moore is outside the scope of the complaint.

The complainant himself acknowledges that Mr. Moore is not the target of his complaint in a posting at his website that addresses this particular MUR. Copy of posting attached; webpage referenced at p. 1 in MUR 5550. In the posting, the complainant states, "[w]hat we have here appears to be a series of Federal felonies – to be fair, not implicating Moore himself" Emphasis added. Excerpt from *Is Moore's speaking tour illegal?*, available at <http://mooreexposed.com/campaignlaws.html>. We agree with the complainant that

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Mr. Moore is not implicated in this complaint. He should thus be dismissed as a respondent.

In any case, Mr. Moore's appearances during the speaking tour and the payment of speaking fees by the universities and/or student groups do not violate FECA.

3. The Speeches and Speaking Fees Do Not Violate FECA

Universities and other institutions of higher learning are bastions of free speech. Such institutions have a long tradition of inviting speakers from across the political, social, and academic spectrum to address their students on issues of importance. Typically, such speaking programs invite a variety of speakers on a variety of topics. The speakers may be controversial, and many programs invite speakers with perspectives that differ sharply. The speakers may or may not be paid. Whoever the speaker, and whether or not he or she is paid by a university or student group, such discourse of ideas is a key component of the students' education, as well as benefiting the larger community within a free society, and it is well-protected by the Constitution's guarantee of free speech.

The Commission has recognized the unique educational role of political speech on campus. For example, in the Explanation and Justification ("E&J") for Final Rule 11 C.F.R. § 114.4 (which includes the regulation of candidate appearances on campus), the Commission noted that during the rulemaking process several comments and witnesses expressed concern regarding the over-regulation of political speech on campus. 60 Fed. Reg. 64260, 64270 - 64271 (Dec. 14, 1995). The Commission discussed these concerns in some detail, and revised the regulation in response to the concerns and to clarify its intent. *Id.* at 64270 - 64271. The resulting regulation permits candidates themselves to act as paid speakers at university campuses without a resulting direct or in-kind campaign contribution, providing certain conditions are met (*e.g.*, the university makes a reasonable effort to ensure that the appearance is conducted as a speech, question and answer session, or similar academic event; the university does not favor any one candidate or political party in permitting the appearances). *Id.* Certainly if a candidate him- or herself may speak at a college campus without violating campaign finance laws, a private citizen should be able to do so as well. The Commission also notes in the E&J that it is declining to make final a proposed rule that would have regulated media coverage of candidate appearances on campus. Instead, the Commission, "has decided not to include this provision in the final rules and to allow educational institutions and the news media to work out their own arrangements." *Id.* at 64271.

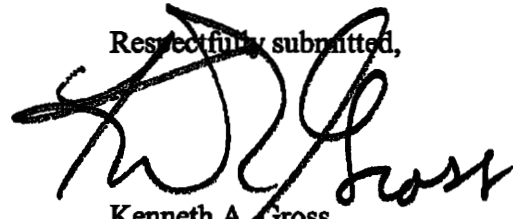

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Mr. Moore was neither a candidate nor a representative of any campaign. Rather, in making on-campus speeches discussing his documentary film, *Fahrenheit 911*, and his personal political beliefs, Mr. Moore acted as an invited participant in the discourse of ideas. He was invited to speak as a filmmaker and private citizen. Thus, even though he is paid by a university or student group for his appearance, no campaign contribution occurs.

For the foregoing reasons, the Commission should dismiss the complaint against Mr. Moore.

Respectfully submitted,



Kenneth A. Gross
Christine E. Kirk
Skadden, Arps, Slate, Meagher
& Flom LLP

Attorneys for Michael Moore

Enclosure

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ATTACHMENT

spending \$40,000 for that speech constitutes anything but

- a. an expenditure "for the purpose of influencing any election for Federal office" and
- b. an expenditure to "expressly advocate the election or defeat" of candidates.

What we have here appears to be a series of Federal felonies -- to be fair, not implicating Moore himself, but certainly implicating a series of corporations and their boards of directors. ←

I personally think this illustrates how campaign "reform" infringes on the First Amendment, but the courts have disagreed. The delicious irony is that Moore can denounce Bush or anyone else wherever he wants . . . so long as he doesn't demand to be paid (i.e., that someone else make an "expenditure") for it. That doesn't seem much of a burden to impose on a multi-millionaire who "just wants to do the right thing," does it?

2. The Question of Whether Groups Funding Moore's Tour May Be Making Illegal Campaign Contributions.

First, under the Federal election laws, a state or state entity is a "person." 2 USC 431(11) defines the term broadly:

"(11) The term "person" includes an individual, partnership, committee, association, corporation, labor organization, *or any other organization or group of persons*, but such term does not include the Federal Government or any authority of the Federal Government."

The FEC's General Counsel has confirmed that "person" includes a State agency. [Link to FEC .pdf file.](#)

Second, "contribution" includes any expenditure made to influence an election (and not just money given directly to a candidate). 2 USC 431(8) defines the term:

(8) (A) The term "contribution" includes-

(i) any gift, subscription, loan, advance, or deposit of money or *anything of value made by any person for the purpose of influencing any election for Federal office.*

It excludes some expenditures, but none apply to Moore's speeches:

(B) The term "contribution" does not include-

(i) the value of services provided *without compensation* by any individual who volunteers on behalf of a candidate or political committee;

(ii) the use of real or personal property, . . . to the extent that the cumulative value of such invitations, food, and beverages provided by such individual on behalf of any single candidate *does not exceed \$1,000* with respect to any single election, and on behalf of all political committees of a political party does not exceed \$2,000 in any calendar year;

There is also an exemption for independent expenditures (Joe Millionaire spending his own money to

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